IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4856 of 1997
with
SPECIAL CIVIL APPLICATION NO. 4858 OF 1997

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KHIMJI PUNA SORATHIYA

Versus

GUJARAT ELECTRICITY BOARD

Appearance:
MR KETAN D SHAH for Petitioners
MR HS MUNSHAW for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 26/03/2004

COMMON ORAL JUDGEMENT

The petitioners are agriculturists. By way of these petitions, the petitioners have challenged the decision

of the appellate Committee of the respondent Board pursuant to the supplementary bills issued by the respondent Board.

2. The allegation levelled against the petitioners was that they used to supply electricity to other consumer from their connection and therefore, it was a case of theft.

3. The petitioners filed amendment producing therewith the appeal memo of the legal heirs of one Shri Juma Moledina of village Mundra, Dist. Kachchh wherein the appellate Committe has considered in a similar case not falling under theft and in that case, the appellate Committee reduced the supplementary bill for amount of Rs.1,25,962.30 ps. and refunded an amount of Rs.88,162.30 ps.

4. I have heard learned Advocates Mr.Shah for the petitioners and Mr.Munsha for the respondent Board. Looking to the averments made in the draft amendment in para 5.10, it will be just and proper to remand the matter to the appellate Committee to re-consider the case of the petitioners in light of the order passed by the appellate Committee in the case of heirs of Shri Juma Moledina which is a similar case wherein regular bill was issued and no penalty charge or any other amount was recovered.

5. In that view of the matter, the petitioners will approach the appellate Committee on or before 21st April 2004 and on receipt of representation/appeal from the petitioners, the appellate Committee will decide the same in the light of the order relied upon by the petitioner and the decision shall be taken within three months from the date of receipt of the representation/appeal of the petitioner.

6. In the result, both these petitions are allowed in part. The order of the appellate Committee is hereby quashed and set aside and the appellate Committee will reconsider the case of the petitioners. In case of refund of the amount, the same shall be adjusted against the future bills of the petitioners. It goes without saying that the appellate Committee will allow the petitioners to produce the documents which they would like to rely upon. It will also be open for the petitioners to canvas all points before the appellate Committee and the appellate Committee will decide the same in accordance with law without being influenced by the earlier order passed by appellate Committee in this

case. The petitions stand allowed as above. Rule is made absolute to the above extent, with no order as to costs. Direct service is permitted.

(K.S. Jhaveri, J.)

Sreeram.